

# **Citizens Advice response to 'Considering the case for a Housing Court: call for evidence'**



## Summary

**1. Courts don't work for too many tenants.** Any reform to the court system needs to work for claimants. We see issues ranging from access to justice, courts not being physically accessible, and court processes being difficult for people to navigate. Changes to legal aid have made this worse.

**2. Reforms could leave existing barriers unresolved.** In the context of the above problems experienced by our clients, we have a number of concerns about possible court reforms:

- it's unclear how a housing court would save time and impact claim timelines
- the power imbalance between landlords and tenants could be made worse
- it's not clear if access to legal aid will - at the very least - be maintained, and
- tenants will still lack the security necessary to enforce their rights.

**3. Reforms to the court system must work for tenants.** In the event that the government pursues a specialist housing court:

- **Existing levels of legal aid must be maintained for all cases** to ensure that tenants are not at an even greater material disadvantage than at present compared to landlords.
- **A new housing court must limit and reduce physical barriers**, as they prevent cases from being heard and forms from being submitted. Courts themselves must also be physically accessible for disabled tenants and landlords.
- **Cases should take place within a reasonable distance and unnecessary travel avoided wherever possible.** Processes for submitting forms and evidence should also be straightforward.

In addition, any reform to the court system should be underpinned by structural changes that will enable tenants to enforce their rights.

- **Tenants need greater security of tenure.** The creation of 3 year tenancies would be a start. However, government should review the ongoing need for Section 21, at the same time as reviewing Section 8, in order to give tenants the security they need to enforce their rights.
- **There needs to be more effective, preventative enforcement by local authorities on disrepair issues, coupled with a review of retaliatory eviction provisions.** Preventative enforcement will reduce the demands currently placed on the court system and make it clearer where the systemic problems lie.
- **Public enforcement - such as the creation of an Ombudsman - would help tenants enforce their rights** and complement people's ability to take cases to court.

Citizens Advice welcomes the opportunity to respond to the government's consultation '[Considering the case for a Housing Court: call for evidence](#)' and provide feedback.

## Background

Last year, 206,554 people came to Citizens Advice with issues relating to housing, making it the third largest issue we see. Of these, 62,778 people had issues relating to private renting - more than any other housing tenure. A fifth of England's population now rent privately.<sup>1</sup> This amounts to approximately 4.7 million households - 36% of whom are families with children.

12% of clients with an issue relating to private renting came to us because of a possession order. Court claims for possession are common, and we acknowledge the Government's concerns about the pressure that housing cases place on county courts in terms of time and resources. There were 23,630 possession orders and 31,658 possession claims made between July-September 2018. 19% of possession claims took place in the private rented sector (PRS), 62% were made by social landlords, and 19% were accelerated claims.<sup>2</sup>

As well as a large number of possession claims - which take an average of 5.6 weeks from claim to order for accelerated possession orders, 7.3 weeks for private landlord cases, and 7.1 weeks for mortgage possessions - county courts cover a breadth of non-possession housing cases including homelessness, deposit disputes and disrepair.

These cases have a significant impact on people's lives. The leading cause of homelessness is the termination of a PRS tenancy. Shelter reports that 18,750 households were made homeless after being evicted from a privately rented home in 2016, an increase of 13,010 since 2011.<sup>3</sup> The termination of an assured shorthold tenancy was the leading reason for this (78%), so it's crucial that court processes work for tenants.

Any reform of the housing courts must accommodate the scale and breadth of cases currently seen in county courts, and existing access to representation via legal aid and costs recovery must be maintained.

---

<sup>1</sup>Citizens Advice, [It's broke, lets fix it](#), 2017.

<sup>2</sup> Ministry of Justice, [Mortgage and landlord possession statistics](#), 2018.

<sup>3</sup> Shelter, [Eviction from a private tenancy accounts for 78% of the rise in homelessness since 2011](#), 2017.

## 1. Courts don't work for too many tenants

Any reform to the court system needs to work for claimants. It is too difficult for tenants to enforce their rights in the current system.

**Access to justice is difficult.** A survey of housing experts working in our network of local Citizens Advice<sup>4</sup> found that 1 in 2 of them think the county courts provide fair access to justice, compared to 1 in 3 who think first-tier tribunals do this.

Respondents to the survey praised the expertise of judges in county court compared to tribunals - they expressed concern that there is a disparity in the amount of specialist knowledge that different judges in first-tier tribunals have.

They were also critical of factors such as the cost of travelling to court and the use of complicated legal jargon that many of our clients, especially if they're vulnerable, do not understand without representation.



### **Vulnerable tenants like Shafeeq are often less able to successfully engage with the court process.**

Shafeeq went to court to claim damages for disrepair. He has multiple disabilities which impact on his day-to-day life, and he found that the court system was not set up to support him effectively.

Reasonable adjustments weren't made to cater for his needs. For instance, court hearings were held at unsuitable times of the day, even following several doctors' letters setting out his needs. This made it difficult for him to attend hearings and was unnecessarily detrimental to his well-being.

As well as making his experience of court more difficult, Shafeeq lost his case and felt this hurt his chances of being awarded compensation.

**Courts are often physically inaccessible.** Many Citizens Advice clients struggle to access courts because of the cost and distance of travel, or because the buildings are not suitably adapted for their disability. This is compounded by local court closures and reduced operating hours. Without other recourse, tenants may for instance be prevented from issuing applications for warrant suspensions. This means that tenants may be unable to stop an eviction from going ahead, and risk homelessness.

*"With the closure of county courts, applicants often have to travel considerable distances (a) to issue applications - e.g. to suspend warrants and (b) for attendance at hearings. Travel too is often during peak hours when it is expensive. Given that*

---

<sup>4</sup> Survey of 36 local Citizens Advice advisers, legal experts (including solicitors and caseworkers), and advocates working within the Citizens Advice network.

*invariably tenants are taken to court for non-payment of rent, attending court is sometimes very difficult if not impossible because of a lack of funds.”<sup>5</sup>*



Fi is from the West Midlands and was served an Accelerated Possession Order. She was unable to submit a last minute defence form locally because her nearest County Court didn't accept them anymore. The nearest location where forms could be submitted was 40 miles away. Fi struggled to change her plans and travel to this location in time to submit her forms by the deadline of 4pm the next day.

**Court systems are difficult for people to navigate.** Citizens Advice research finds that just 23% of tenants feel confident applying to court.<sup>6</sup> 99% of tenants whose landlord has taken an unreasonably long time to complete repairs did not bring a claim for disrepair to court. Of these, 1 in 2 (54%) said they did not take a claim to court because of the complexity of the process. A similar number (45%) said they were put off by the length of time involved.

A quarter (26%) of tenants said that difficulty completing court forms and paperwork stopped them from progressing with their claim.<sup>7</sup> Similarly, Citizens Advice legal experts<sup>8</sup> have found that the amount of paperwork and complexity of processes needed to deal with a claim makes clients more willing to reach agreements with their landlords outside of court. This can be a compelling alternative for clients who find court processes complicated and intimidating. But it also risks a less favourable outcome in cases where the tenant does not have access to good advice.

**Changes to legal aid have made this worse.** 66% of tenants whose landlords did not complete repairs within a reasonable amount of time did not go to court because of the cost. This was the most common reason they cited.<sup>9</sup> Cuts to legal aid availability for cases heard in county court, and restrictions on eligibility for housing disrepair cases, acts as a major barrier to tenants' access to justice.

The number of Legal Help matters started for housing cases has declined by 58% since changes to legal aid eligibility were made in 2012.<sup>10</sup> The number of Legal Help and controlled legal aid providers specialising in housing had also declined by 219 providers since 2012.<sup>11</sup> Without access to legal aid, people who cannot afford to pursue a disrepair claim may be forced to live in potentially dangerous and unhealthy conditions.

---

<sup>5</sup> Survey of 36 local Citizens Advice advisers, legal experts (including solicitors and caseworkers), and advocates working within the Citizens Advice network.

<sup>6</sup> Citizens Advice, [It's broke. lets fix it](#), 2017.

<sup>7</sup> Citizens Advice, [It's broke. lets fix it](#), 2017.

<sup>8</sup> This includes local Citizens Advice advisers, legal experts (including solicitors and caseworkers), and advocates working within the Citizens Advice network.

<sup>9</sup> Citizens Advice, [It's broke. lets fix it](#), 2017.

<sup>10</sup> House of Commons Library, [Housing and access to legal aid](#), 2018.

<sup>11</sup> House of Commons Library, [Housing and access to legal aid](#), 2018.

*“The cuts to the court service and cuts in legal aid have however meant that access to justice in general has been fundamentally reduced for tenants who are unable to afford to pay for their own legal fees.”*

Cuts to legal aid mean tenants are often unable to access a solicitor. They will often go without representation unless they are able to find someone who will work on a ‘no win, no fee’ basis.<sup>12</sup> However, these solicitors are only available in cases where damages are likely to be awarded, and in systems which allow costs recovery, ie. courts rather than tribunals. Combined with cuts to court resources, a lack of legal aid exacerbates difficulties navigating court processes, places additional pressure on duty solicitors, and makes it less likely that tenants will receive fair outcomes.

*“Possession lists are now very heavy with cases following the closure of a number of local county courts...for most clients it is a very worrying procedure. There is usually just one duty solicitor present to help applicants but the pressure of cases often means that there is insufficient time to take proper instructions.”<sup>13</sup>*

*“The absence of legal aid means that many clients are entering court without the benefit of representation. Some judges (but not all) are not sympathetic to “litigants in person” especially as there is a large current backlog of cases to be dealt with.”<sup>14</sup>*

## **2. Reforms could leave major barriers unresolved**

In the context of the problems experienced by our clients described above, we have a number of concerns about the options presented by this consultation

**It’s unclear how a housing court would save time.** The median time from claim to possession order for all private landlord possessions is 7 weeks.<sup>15</sup> The current timeframe for possession orders offers a reasonable period for tenants to apply for extensions or file a last-minute defence. Attempts to speed up possession orders risks preventing tenants from being able to mount emergency defences, which can mean eviction and homelessness. The bigger delay is the period from claim to eviction, which takes a median average of 16 weeks. The creation of a housing court without its own enforcement wing is unlikely to impact bailiff enforcement speeds.

**The power imbalance between landlords and tenants could be made worse.**

Tenants who manage to take their claims to court are often at a disadvantage compared to their landlord. Tenants have limited resources and expert legal knowledge available

---

<sup>12</sup> Most available data on litigants in person relates to the family courts. However, the National Audit Office has said that legal aid reforms are also likely to have increased the number of litigants in person in civil law courts. [Litigants in person: the rise of the self-represented litigant in civil and family cases in England and Wales](#), House of Commons, 2016.

<sup>13</sup> Survey of 36 local Citizens Advice advisers, legal experts (including solicitors and caseworkers), and advocates working within the Citizens Advice network.

<sup>14</sup> Survey of 36 local Citizens Advice advisers, legal experts (including solicitors and caseworkers), and advocates working within the Citizens Advice network.

<sup>15</sup> Ministry of Justice, [Mortgage and landlord possession statistics](#), 2018.

to them compared with that available to landlords.<sup>16</sup> Responses to our survey of housing experts expressed concern that:

*“Clients who have to represent themselves when they are expected to comply with directions and tribunal rules are disadvantaged, especially if their opponent is in a position to afford legal representation.”*

*“The landlord has the power. If a tenant is unable to access legal representation it is disproportionate in the balance of justice.”*

*“Too many [tenants] end up in court where the only advice given to them came from their landlord who does, of course, have a vested interest in the outcome of any proceedings and which are normally quite opposed to the interests of the tenant.”*

The options presented in this consultation are unclear as to what form a specialist housing court will take. If it would mean moving housing cases from the county court to a tribunal system, this would make the power imbalance between tenants and landlords even more pronounced. The lack of legal aid and costs recovery in tribunals means that tenants are unlikely to be represented, which has high stakes for tenants - paramount of which is the risk of losing their home.

**It’s not clear if access to legal aid will - at the very least - be maintained.** To some degree an inequality of arms between landlords and tenants is inherent, but has been deepened by legal aid restrictions.<sup>17</sup> The options in this consultation do not offer any indication as to whether legal aid would be maintained if a specialist housing court were to be introduced. However, current cases heard in tribunals, such as benefits and employment cases, are out of scope of legal aid.

There is also no costs recovery available in tribunals, which would mean that no-win-no-fee solicitors would not be available to tenants whose cases were heard in this environment. Even those in a position to pay for a solicitor would be unable to recover costs in this forum.

If there is a move from county courts to tribunals, we are concerned that this would mean legal aid would no longer be available for housing cases. This would make it even harder for tenants to successfully navigate court systems for both possession and disrepair claims, and risks compounding the inequality of arms between landlords and tenants. Referring specifically to the impact these changes would have on people who share a protected characteristic,<sup>18</sup> one respondent in our survey stated:

*“Tenants who are disabled are more likely to be claiming benefits and therefore likely to be entitled to legal aid. There is a significant proportion of single mothers who are on low income and again likely to be entitled to legal aid. Forcing these groups to*

---

<sup>16</sup> This includes local Citizens Advice advisers, legal experts (including solicitors and caseworkers), and advocates working within the Citizens Advice network.

<sup>17</sup> House of Commons Library, [Housing and access to legal aid](#), 2018

<sup>18</sup> Defined under the Equality Act 2010 (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation)

*represent themselves against an opponent who has more access to wealth, i.e property owner, means that discrimination will inevitably occur.”*



**Janine has mental health problems and a heart condition. She had been renting a house in South West England which was in a dangerous state of disrepair.**

Despite complaining, her landlord made no attempt at repairs. After 6 months, Janine withheld her rent in the hopes it would make her landlord fix the problems. When this failed, she moved out.

Janine was taken to court by her landlord. Janine counter claimed because the house was unfit to live in, but she couldn't access legal aid. Without legal aid she was forced to represent herself, but Janine's mental health problems affected her ability to understand questions and answer them correctly.

Her claim was unsuccessful and she was ordered to pay the landlord her rent, plus court costs. This has caused her to fall even deeper into debts which now total over £5000.

**Tenants will still lack the security necessary to enforce their rights.** Tenants tend to be reluctant to pursue formal action against a landlord. Overall, only 1% of tenants eligible for compensation due to their landlord not completing legally required repairs have sought compensation through the courts.<sup>19</sup>

Research by Citizens Advice found that 41% of tenants waited an unreasonably long time for repairs, of which just 5% reported the disrepair to their local authority's Environmental Health team. Instead, tenants are likely to rely on informal solutions, such as withholding rent or paying for repairs themselves.<sup>20</sup> 33% of tenants who waited an unreasonably long time for repairs gave up, and 7% relocated.

One reason for this is tenants' fear of a negative reaction from their landlord. 44% of tenants say fear of eviction would stop them from continuing to negotiate with their landlord over disrepair.<sup>21</sup> 43% of tenants who have asked for repairs, or made a complaint since October 2015, faced some form of retaliatory action - including harassment, threats, rent increases and eviction. Private tenants who have received a Section 21 eviction notice are over twice as likely to have complained to their landlord in the previous 6 months.<sup>22</sup>

Despite the Deregulation Act 2015 establishing specific retaliatory eviction protections, tenants have not benefited from this. Limited Local Authority resources have prevented enforcement actions from being routinely carried out to protect tenants - just 11% of

<sup>19</sup> Citizens Advice, [Redressing the balance](#), 2018.

<sup>20</sup> Citizens Advice, [It's broke. lets fix it](#), 2017.

<sup>21</sup> Citizens Advice, [It's broke. lets fix it](#), 2017.

<sup>22</sup> Compared to those who have not. Citizens Advice, [Touch and go](#), 2018.



local authorities issued a civil penalty notice against a landlord or letting agent during 2017-18.<sup>23</sup>



**Jo is in her 40s, suffers from several mental health problems and has a disability.**

She moved into a flat in South England and quickly noticed problems including mould, asbestos, faulty windows and unstable floorboards. More problems developed as the weather changed. Over the 12 month tenancy, Jo developed a chest infection, was electrocuted and suffered a nervous breakdown. She was also repeatedly verbally abused by the letting agent.

She was issued with a Section 21 by her landlord after complaining about the level of disrepair in her flat.

The possibility of a retaliatory eviction therefore acts as a major barrier to tenants bringing a claim against their landlord, preventing many disrepair claims from reaching the county courts in the first place.

Providing tenants and landlords with more information on the enforcement process may improve claim timelines slightly in some areas. However, tenants will still struggle to physically access courts and legal advice. While 91% of legal experts in the local Citizens Advice network said further advice would help users navigate the court and tribunal process, improved guidance alone is not a solution to the problems tenants face in court.<sup>24</sup> This is not a substitute for legal representation, and does not address pressure points in the system.

### 3. Reforms to the court system must work for tenants

Without further detail, it is difficult for us to consider how any proposals may work in practice, and how they would address the core difficulties that tenants face when resolving housing disputes in court.

In the event that the government pursues a specialist housing court:

- **Existing levels of legal aid must be maintained for all cases** to ensure that tenants are not at an even greater material disadvantage than at present when compared to landlords.
- **A new housing court must limit and reduce physical barriers**, as they prevent cases from being heard and forms from being submitted. Courts themselves must also be physically accessible for disabled tenants and landlords.

---

<sup>23</sup> The Guardian, [Rogue landlords: 90% of local authorities fail to issue fines](#), 29th November 2018.

<sup>24</sup> 68% said this further guidance is needed for both landlords and tenants, and 23% said more guidance is needed for tenants.

- **Cases should take place within a reasonable distance and unnecessary travel avoided wherever possible.** Processes for submitting forms and evidence should also be straightforward.

In addition any, reform to the court system should be underpinned by structural changes that will enable tenants to enforce their rights:

- **Tenants need greater security of tenure.** The creation of 3 year tenancies would be a start. However, government should review the ongoing need for Section 21, at the same time as reviewing Section 8, in order to give tenants the security they need to enforce their rights.
- **There needs to be more effective, preventative enforcement by local authorities on disrepair issues, coupled with a review of retaliatory eviction provisions.** Preventative enforcement will reduce the demands currently placed on the court system and make it clearer where the systemic problems lie.
- **Public enforcement - such as the creation of an Ombudsman - would help tenants enforce their rights** and complement people's ability to take cases to court.

Without these changes, creating a specialist housing court, or making structural changes to courts and tribunals, risks compounding existing problems and diminishing tenants' access to justice.

**Caroline Aliwell,**  
[caroline.aliwell@citizensadvice.org.uk](mailto:caroline.aliwell@citizensadvice.org.uk)  
**Hannah Poll,**  
[hannah.poll@citizensadvice.org.uk](mailto:hannah.poll@citizensadvice.org.uk)

**22 January 2019**